



DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Practitioner Conduct and Discipline

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of information collection; request for comment.

SUMMARY: The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995, invites comments on the extension and revision of an existing information collection: 0651-0017 (Practitioner Conduct and Discipline). The purpose of this notice is to allow 60 days for public comment preceding submission of the information collection to OMB.

DATES: To ensure consideration, comments regarding this information collection must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Interested persons are invited to submit written comments by any of the following methods. Do not submit Confidential Business Information or otherwise sensitive or protected information.

- *Email:* InformationCollection@uspto.gov. Include “0651-0017 comment” in the subject line of the message.
- *Federal Rulemaking Portal:* <http://www.regulations.gov>.
- *Mail:* Kimberly Hardy, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Request for additional information should be directed to Dahlia George, Office of Enrollment and Discipline, United States Patent

and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450; by telephone at 571-272-4097; or by email at dahlia.george@uspto.gov with "0651-0017 comment" in the subject line. Additional information about this information collection is also available at <http://www.reginfo.gov> under "Information Collection Review."

SUPPLEMENTARY INFORMATION:

I. Abstract

The Director of the USPTO has the authority to establish regulations governing the conduct and discipline of agents, attorneys, or other persons representing applicants and other parties before the USPTO (35 U.S.C. 2 and 32–33). The USPTO Rules of Professional Conduct, set forth in subpart D, part 11 of title 37 of the Code of Federal Regulations, prescribe the manner in which agents, attorneys, and other practitioners, representing applicants and other parties before the USPTO should conduct themselves professionally. Part 11 outlines practitioners' responsibilities for recordkeeping and reporting violations or complaints of misconduct to the USPTO. Subpart C of part 11 sets forth the manner by which the USPTO investigates misconduct and imposes discipline.

The USPTO Rules of Professional Conduct require a practitioner to maintain complete records of all funds, securities, and other properties of clients coming into his or her possession, and to render appropriate accounts to the client regarding the funds, securities, and other properties of clients coming into the practitioner's possession, collectively known as "client property." These recordkeeping requirements are necessary to maintain the integrity of client property. State bars require attorneys to perform similar recordkeeping.

Part 11 also requires a practitioner to report knowledge of certain violations of the USPTO Rules of Professional Conduct to the USPTO. The Director of the Office of Enrollment and Discipline (OED) may, after notice and opportunity for a hearing, suspend, exclude, or disqualify any practitioner from further practice before the USPTO based on

non-compliance with the USPTO Rules of Professional Conduct. Practitioners who have been excluded or suspended from practice before the USPTO, practitioners transferred to disability inactive status, and practitioners who have resigned must keep and maintain records of their steps to comply with the suspension or exclusion order, transfer to disability inactive status, or resignation. These records are necessary to demonstrate eligibility for reinstatement. Reports of alleged violations of the USPTO Rules of Professional Conduct are used by the Director of OED to conduct investigations and disciplinary hearings, as appropriate.

This information collection covers the various reporting and recordkeeping requirements set forth in Part 11 for practitioners representing applicants and other parties before the USPTO. Also covered are petitions for reinstatement for suspended or excluded practitioners and the means for reporting violations or complaints of misconduct to the USPTO.

II. Method of Collection

Items in this information collection may be submitted via online electronic submissions. Applicants may also submit the information in paper form by mail, fax, or hand delivery.

III. Data

OMB Control Number: 0651-0017.

Forms: No forms.

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Individuals or households.

Respondent's Obligation: Required to obtain or retain benefits.

Estimated Number of Annual Respondents 13,190 respondents.

Estimated Number of Annual Responses: 13,190 responses.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take the public from approximately 1 to 3 hours to complete.

This includes the time to gather the necessary information, prepare the forms or documents, and submit the completed request to the USPTO.

Estimated Total Annual Respondent Burden Hours: 14,192 hours.

Estimated Total Annual Respondent Hourly Cost Burden: \$6,173,520.

Table 1: Total Reporting Burden Hours and Hourly Costs to Individuals or Households Respondents

| Item No. | Item | Estimated Annual Respondents | Responses per Respondent | Estimated Annual Responses (a) X (b) = (c) | Estimated Time For Response (hours) (d) | Estimated Burden (hour/year) (c) x (d) = (e) | Rate ¹ (\$/hour) (f) | Estimated Annual Respondent Cost Burden (e) x (f) = (g) |
|----------|------------------------------------------------------------------|------------------------------|--------------------------|-----------------------------------------------|--------------------------------------------|-------------------------------------------------|------------------------------------|------------------------------------------------------------|
| | | (a) | (b) | | | | | |
| 1 | Complaint / Violation Reporting | 216 | 1 | 216 | 3 | 648 | \$435 | \$281,880 |
| 2 | Petition for Reinstatement under the Provisions Section 11.60(c) | 5 | 1 | 5 | 1 | 5 | \$435 | \$2,175 |
| | Totals | 221 | --- | 221 | --- | 653 | --- | \$284,055 |

The USPTO Rules of Professional Conduct require practitioner agents to maintain various records to maintain the integrity of client property and meet other requirements. Additional recordkeeping requirements are also given for practitioners who are under suspension or exclusion. The USPTO estimates that it will take a practitioner between 1 and 20 hours to perform these recordkeeping actions. Approximately 12,969 practitioners require recordkeeping actions, for a total of 13,539 hours.

Table 2: Total Recordkeeping Burden Hours and Hourly Costs to Individuals or Households Respondents

| Item No. | Item | Estimated Annual Responses | Estimated Time For Response (hours) | Estimated Burden (hour/year) | Rate ² (\$/hour) | Estimated Annual Respondent Cost Burden |
|----------|------|----------------------------|-------------------------------------|------------------------------|-----------------------------|-----------------------------------------|
| | | (a) | (b) | (a) x (b) = (c) | (d) | (c) x (d) = (e) |

¹ 2021 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA); pg. F-27. The USPTO uses the average billing rate for intellectual property attorneys in private firms which is \$435 per hour. (<https://www.aipla.org/home/news-publications/economic-survey>)

² Ibid.

| Item No. | Item | Estimated Annual Responses (a) | Estimated Time For Response (hours) (b) | Estimated Burden (hour/year) (a) x (b) = (c) | Rate ² (\$/hour) (d) | Estimated Annual Respondent Cost Burden (c) x (d) = (e) |
|----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|--------------------------------------------|-------------------------------------------------|------------------------------------|------------------------------------------------------------|
| 3 | Recordkeeping Maintenance and Disclosure (includes advertisements, disclosure requirements relating to soliciting professional employment, notifications by non-attorney practitioner of inadvertently sent documents, and financial books and records such as trust accounts, fiduciary accounts, and operating accounts) | 12,939 | 1 | 12,939 | \$435 | \$5,628,465 |
| 4 | Recordkeeping Maintenance Regarding Practitioners Under Suspension or Exclusion | 30 | 20 | 600 | \$435 | \$261,000 |
| | Totals | 12,969 | - - - | 13,539 | - - - | \$5,889,465 |

Estimated Total Annual Respondent Non-hourly Cost Burden: \$8,419. This information collection has no capital start-up, maintenance costs, or recordkeeping costs. However, this information collection does have annual costs in the form of filing fees and postage costs.

Filing Fees

There is one filing fee associated with this information collection. This fee is listed in the table below.

Table 3 – Estimated Total Annual Respondent Filing Fee Cost Burden

| Item No. | Item | Estimated Annual Responses (a) | Filing Fee (\$) (b) | Total Non-hour Cost Burden (yr) (a) x (b) = (c) |
|----------|------------------------------------------------------------------|-----------------------------------|------------------------|----------------------------------------------------|
| 2 | Petition for Reinstatement under the Provisions Section 11.60(c) | 5 | \$1,680 | \$8,400 |
| | Totals | | | \$8,400 |

Postage Costs

Although the USPTO prefers that the items in this information collection be submitted electronically, responses may be submitted by mail through the United States Postal Service (USPS). The USPTO estimates that 1% of the 221 items will be submitted in the mail resulting in 2 mailed items. The USPTO estimates that the average postage cost for a mailed submission, using a Priority Mail 2-day flat rate legal envelope, will be

\$9.25. Therefore, the USPTO estimates \$19 in postage costs associated with this information collection.

IV. Request for Comments

The USPTO is soliciting public comments to:

- (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- (b) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (c) Enhance the quality, utility, and clarity of the information to be collected; and
- (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

All comments submitted in response to this notice are a matter of public record. USPTO will include or summarize each comment in the request to OMB to approve this information collection. Before including an address, phone number, email address, or other personally identifiable information (PII) in a comment, be aware that the entire comment—including PII—may be made publicly available at any time. While you may ask in your comment to withhold PII from public view, USPTO cannot guarantee that it will be able to do so.

Kimberly Hardy,

Information Collections Officer,

Office of the Chief Administrative Officer,

United States Patent and Trademark Office.

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